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10/074,214	02/14/2002	Kenneth John Molee	53394.000603	6176

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EXAMINER

KIDWELL, MICHELE M

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 12/18/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/074,214

Applicant(s)

MOLEE, KENNETH JOHN

Examiner

Michele Kidwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_ 6) ☐ Other: \_\_\_\_

## **DETAILED ACTION**

### ***Information Disclosure Statement***

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 – 7 and 9 – 14 are rejected under 35 U.S.C. 102(e) as being anticipated by Raufman et al. (US 2002/0062117 A1).

With respect to claim 1, Raufman et al. (hereinafter "Raufman") discloses a disposable absorbent garment having a longitudinal dimension and a lateral dimension comprising a topsheet (24), a backsheet having an outer surface (26), and absorbent core (28) at least partially disposed between the topsheet and the backsheet (page 3,

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paragraph 0029); the topsheet, backsheet and absorbent core making up a main body of the absorbent garment having longitudinal and lateral centerlines, and being configured to provide a front waist region, a rear waist, and a crotch region longitudinally disposed therebetween (figures 1 & 2); and a disposable fastening mechanism disposed on the outer surface of the backsheet that is capable of maintaining the garment in a rolled up configuration after the garment is rolled up, wherein the disposal fastening mechanism includes visible indicia disposed thereon as set forth on page 8, paragraph 0067 and in figure 14.

As to claim 2, Raufman discloses the absorbent article further comprising elastic leg gathers comprising one or more elastic materials disposed adjacent a lateral edge of the crotch region, and standing leg gathers disposed on the topsheet adjacent a lateral edge of the crotch region as set forth on page 6 in paragraphs 0048 and 0050 and in figure 1.

With reference to claims 3 and 4, Raufman discloses the disposal fastening mechanism as an elastically extensible adhesive tape as set forth on page 5 in paragraph 0046.

Raufman incorporates the disclosure of Bergman et al. (US 5,624,427), which teaches an elastically extensible adhesive tape in the abstract.

Regarding claim 5, Raufman incorporates the disclosure of Robertson et al. (US 4,963,140) on page 5, paragraph 0046 whereby Robertson et al. teach an absorbent garment wherein the disposal fastening mechanism is disposed on the outer surface of

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the backsheet in a folded configuration such that a first end of the disposal fastening mechanism is permanently adhered to the outer surface of the backsheet (figures 2 – 4), and a second end of the disposal fastening mechanism is temporarily adhered to a folded portion thereof as set forth in col. 8, line 67 to col. 9, line 17 and figure 8.

As to claims 6 and 7, Raufman discloses the visible indicia as a combination of words and graphics as set forth in figures 3 – 16.

Regarding claim 9, Raufman discloses an absorbent garment further comprising a chassis layer (160) whereby the main body of the garment is associated with the chassis layer and the disposal fastening mechanism is disposed on an outer surface of the chassis layer as set forth on page 8, paragraph 0068 and figure 15.

With respect to claims 10 and 11, Raufman discloses an absorbent garment wherein the disposal fastening mechanism is disposed on the outer surface of the backsheet and can be extended to secure the garment in a rolled up configuration (figure 15) and the extension is considered to be both longitudinal and lateral since the mechanism comprises both longitudinal and lateral dimensions.

Additionally, Robertson et al. (US 4,963,140) teach the longitudinal and lateral extension as set forth in col. 8, line 67 to col. 9, line 17 and figure 8.

Regarding claim 12, Raufman discloses the absorbent garment further comprising waist elastics disposed in the first and second waist regions as set forth on page 5 in paragraph 0043.

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As to claim 13, Raufman discloses the waist elastics being disposed between two outer non-woven sheets as set forth on page 5 in paragraph 0044.

Raufman incorporates the disclosure of Foreman (US 4,816,025) which teaches the waist elastics being disposed between two outer nonwoven sheets as set forth in col. 5, lines 33 – 34; col. 5, line 68 to col. 6, line 8 and col.13, line 65 to col. 14, line 5.

With respect to claim 14, see the rejection of claim 1.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Raufman et al. (US 2002/0062117 A1).

The difference between Raufman and claim 8 is the provision that the visible indicia comprise an insignia indicating the manufacturer or origin of the garment.

Raufman discloses an absorbent garment comprising an insignia as set forth in figures 3 – 16.

It would have been obvious to one of ordinary skill in the art to modify the absorbent garment of Raufman to provide an insignia indicating the manufacturer or origin of the garment since the general conditions of a claim have been disclosed in the prior art and substituting one insignia for another would be considered an obvious


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matter of design choice that does not patentably distinguish the claimed invention from the prior art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday - Friday, 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 703-308-1957. The fax phone number for the organization where this application or proceeding is assigned is 703-305-3590.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

  
Michele Kidwell  
December 13, 2003

  
WEILUN LO  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700